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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VANS, INC. and VF OUTDOOR, LLC	:	
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Plaintiffs,	:	
	:	
-against-	:	22-cv-02156-WFK-RML
	:	
MSCHF PRODUCT STUDIOS, INC.,	:	
	:	
Defendant	:	
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DECLARATION OF GABRIEL WHALEY

I, Gabriel Whaley, declare as follows:

1. I am the founder and Chief Executive Officer of the conceptual art collective MSCHF Product Studios, Inc. (“MSCHF”). Based in Brooklyn, New York, MSCHF has garnered world-wide recognition for art that engages fashion, technology, and capitalism in various, often-unexpected mediums to critique society.
2. I make this declaration on personal knowledge in opposition to the Motion for a Temporary Restraining Order and Preliminary Injunction filed by Vans, Inc. and VF Outdoor, LLC (together, “Vans”) against MSCHF.

Background

3. I was born and raised in rural North Carolina. After I graduated from high school, I enrolled in the United States Military Academy at West Point. I then transferred to the University of North Carolina at Chapel Hill, where I received my bachelor's degree in 2012.

4. After graduation, I worked odd jobs while teaching myself to write code. To keep myself motivated, I attempted coding projects that allowed me to be creative. One of my first projects was to create "Worst Fast Agency," with the website <worstfastagency.com>, which anonymously tweeted bad advice for \$1 per Tweet. This was a parody of "World's Fastest Agency," which was a company started at the time by prolific guerrilla-marketer Floyd Hayes that would answer creative briefs via Twitter within 24 hours for \$999 each. I was blown away by the attention my concept received. The most popular tech blogs at the time, including *Beta Beat* and *Mashable*, as well as several other media sources, such as *The New York Observer* and *Adweek*, reported on it.¹ This was a game-changing moment for me. I realized my calling was to raise attention to the absurdities of modern culture through these forms of expression.

5. As a result of the publicity Worst Fast Agency received, BuzzFeed, the popular digital media company, messaged me on Twitter and offered me an internship. The internship ultimately turned into a full-time job as a BuzzFeed "Creative." Although the BuzzFeed position provided a steady paycheck, I was not creatively fulfilled by the job and continued creating my own, independent projects in the evenings. For example, in 2014 I built

¹ See, e.g., *Worst Fast Agency Pledges to Give Clients Quick Terrible Advice for Free*, ADWEEK (Mar. 25, 2013), available at <https://www.adweek.com/agencyspy/worst-fast-agency-pledges-to-give-clients-quick-terrible-advice-for-1/47251/>.

a dating app called “Wingman” that worked only on airplanes; this was an obvious parody of the popularity of dating websites at that time, and this project also garnered significant media attention, with people talking about the meaning of dating and relationships in the modern world.²

6. I also created an animated GIF (which is an image file that contains basic animation that users can send through text messages or other media) that looked like the bubbles that the iPhone shows when someone is typing a text message. People were able to download the GIF from my website <miscellaneousmischievous.com> and send it in an iPhone text message, where it would then look to the recipient like the sender was always typing a very long text message they were about to send (even though they were not). This poked fun at how dependent society has become on our cellphones and text messaging; people will actually sit there staring at the “typing bubbles” on a phone for a ridiculous amount of time without ever realizing their obsession with their phones. The “typing bubbles” GIF went viral, and celebrities began using it, including comedian Chelsea Peretti.

7. I loved expressing my creativity this way. I felt like I was creating things in mediums that did not belong in white-walled art galleries. I knew this was something I wanted to do full-time. I left BuzzFeed after a year and, again, began working odd jobs just to pay bills until I figured out how to make creativity my full-time job.

8. Finally, I got the courage to try and make it on my own. I began reaching out to brands and offering to create provocative advertisements for them, under their name, for compensation. My first client was the e-commerce mattress company Casper Sleep. I came up

² See, e.g., *Wingman: A Dating App For Air Travelers*, THRILLIST (Mar. 12, 2014), available at <https://www.thrillist.com/travel/nation/wingman-a-dating-app-for-air-travelers-hinge-and-tinder-of-the-skies>.

with several unique ways for Casper to reach consumers. For instance, I created “Insomno Bot 3000,” which is a computer chat bot that would respond only between the hours of 1am and 5am under the guise that Casper wanted to provide a friend for its customers who couldn't sleep. Casper got a ton of attention, and the idea was even nominated for awards. *See* <https://shortyawards.com/9th/meet-insomnobot-3000>. This was just one of several projects like this that I worked on at this stage in my career.

9. For the next three years, I created innovative and unique advertisement ideas for clients. But although I was making an income, and had even grown the business to employ five others, I knew this still wasn't my calling. It was sad to see all this creativity diluted among brands selling random commodities. I dreamed to see the creativity actually build towards something bigger.

10. So in 2019, we incorporated MSCHF to do just that.

MSCHF Is an Art Collective

11. MSCHF is a collective that makes modern art that comments on society through unique media. MSCHF critiques society by creating works that exist in multiple industries at once—fine art, collectibles, sneakers, and luxury fashion, among others—and adding commentary on them. MSCHF's spheres of influence and cultural critiques include media, art, academia, tech, deep state, politics, celebrity, and business, among others. Our art is not “typical” art, and that is what makes it so special and so provocative.

12. As stated in our mission statement:

We believe it is better to make art that participates directly in its subject matter; it is stronger to do a thing, than to talk about a thing. MSCHF makes artworks that live directly in the systems they critique, instead of hiding inside white walled galleries. There is no better way to start a conversation about consumer culture than by participating in consumer

culture. We choose a specific medium to engage with specific subject matter: we will make shoes, stream video, publish books, make paintings and sculpture, build apps or web services – everything is in service to the concept. MSCHF is fully context chameleonic.

13. Like all great contemporary art, the nature of MSCHF’s art has garnered significant press attention. We are really proud of that. For example:

- *Digital Trends* debated the “What-is-MSCHF?” question at length two years ago. The conclusion: MSCHF makes “pop art for the internet age.”³
- The *New York Times* dubbed MSCHF “the Banksys of consumer culture.”⁴
- CNN describes MSCHF as a headline-making “art collective” that specializes in “‘drops’ -- a series of irreverent art projects.”⁵
- *Business Insider* wrote that MSCHF’s “products are meant to poke fun at everything and anything, because MSCHF takes pride in pushing the boundaries.”⁶
- *Esquire* referred to MSCHF as an art collective “that releases puckish products that often stir up controversy.”⁷

³ Dormehl, *We’ve hit peak millennial internet culture. Want proof? Meet MSCHF*, DIG. TIMES, Mar. 17, 2020, at 21, <https://www.digitaltrends.com/cool-tech/inside-the-world-of-mschf/>. A true and correct copy of the article is attached hereto as Exhibit 11.

⁴ Vanessa Friedman, *\$76,000 Birkinstocks Made From Actual Birkin Bags?*, N.Y. TIMES, Feb. 8, 2021, at 1, <https://www.nytimes.com/2021/02/08/style/MSCHF-birkenstocks-birkin-bags-hermes.html>. A true and correct copy of the article is attached hereto as Exhibit 12.

⁵ Oscar Holland, *A \$30K Damien Hirst was cut up – and the pieces are selling for seven times as much*, CNN.COM, Apr. 30, 2020, at 4, <https://www.cnn.com/style/article/damien-hirst-mschf-severed-spots/index.html>. A true and correct copy of the article is attached hereto as Exhibit 13.

⁶ Paige Leskin and Allana Akhtar, *Inside the company behind Lil Nas X’s ‘Satan shoes.’ Which has gone viral for products like toaster-shaped bath bombs and AI-generated feet photos*, BUS. INSIDER, Jan. 23, 2020, at 3, <https://www.businessinsider.com/mschf-company-behind-viral-jesus-shoes-feet-generator-bull-moon-2020-1>. A true and correct copy of the article is attached hereto as Exhibit 14.

⁷ Daniel Dumas, *Inside MSCHF’s Bold, Brilliant, Slightly Unhinged Plan to Shake Up Streetwear*, ESQUIRE, June 14, 2021, at 2, <https://www.esquire.com/style/mens->

- *The Verge* wrote of MSCHF that its crew of “artists, designers, and product developers” have made their mark on the “internet” and “the world.”⁸

14. MSCHF’s work has been featured in dozens of news outlets including *Action News Now, Ad Age, ArtForum, Artlyst, ArtNet, ARTnews, Axios, BBC, Billboard, Bloomberg, Boing Boing, Breitbart, BuzzFeed, CBS, Chicago Tribune, CNBC, CNET, CNN, Collateral, Complex, Core77, Corriere Della Sera, Design Milk, Design Taxi, Dezeen, Disegno, Esquire, FAD Magazine, Forbes, Fox News, Frieze, Gizmodo, GQ, Highsnobiety, Hypebae, Hypebeast, Inc., Indy 100, Input Magazine, Interview Mag, KCRW, La Regione, LA Times, Late Night With Seth Meyers, Lider Media, Los Angeles Times, Mashable, MIT Press, MTV, National Review, NBC, New York Magazine, New York Post, Newsweek, NPR, Page 6, Paper Mag, PC World, PinkNews, Politico, Quartz, Refinery29, Reuters, Slate, Sotheby’s, Tech Crunch, Teen Vogue, The Art Newspaper, The Atlantic, The AV Club, The Daily Dot, The Daily Mail, The Economic Times, The Fashion Law, The Guardian, The Hill, The Hollywood Reporter, The Hustle, The Independent, The Intercept, The Irish Times, The Miami Herald, The Daily Mirror, The New York Times, The Onion, The Philadelphia Inquirer, The Star, The Verge, The Wall Street Journal, The Washington Post, Time Magazine, The Tonight Show With Jimmy Fallon, Unilad, US Weekly, USA Today, Vanity Fair, Vice, Vogue, Vox, W Magazine, Wired, Yahoo Finance, and Yahoo News, among others.*

fashion/a36702380/what-is-mschf-brand-sneakers-streetwear/. A true and correct copy of the article is attached hereto as Exhibit 15.

⁸ Bijan Stephen, *Mischief Managed: How MSCHF managed to dominate the internet – with fun!*, VERGE, July 27, 2020, at 2, <https://www.theverge.com/21320127/mschf-products-jesus-shoes-puff-chicken-office-business>. A true and correct copy of the article is attached hereto as Exhibit 16.

15. MSCHF has lectured at leading universities and institutions including Brown University, New York University, The Rhode Island School of Design, The School of Visual Art, SUNY Purchase, Northwestern University, and SXSW.

16. MSCHF does not have a flagship product or flagship category. MSCHF has made consumer packaged food products, video games, magazines, sneakers, interactive digital experiences, plastic collectibles, fine art works, and many other items and experiences.

MSCHF's Drops

17. MSCHF announces its creative works in “drops,” which occur in roughly two-week intervals. Each drop is numbered sequentially, starting with Drop 1 a few years ago. Our many followers eagerly await these drops. We have built an audience that knows, expects, and looks forward to the semi-regular release of materials.

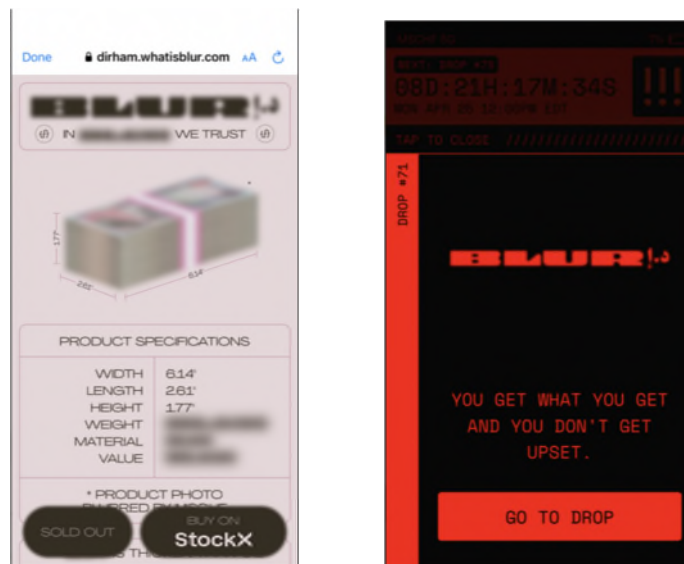
18. To date, MSCHF has had 74 drops, participated in by tens of thousands of consumers all over the world. In 2022 alone, MSCHF drops have critiqued: music (Drop 73); the United States political system (Drop 72); consumerism and digital media (Drops 66, 67, and 71); standardized testing (Drop 70); the “Hallmark Holiday” phenomenon (Drop 69); and the United States legal system (Drop 68). (**Exhibits 1-8**). Drops are often accompanied by a “manifesto” – which adds to, and becomes part of, the art. (E.g., **Exhibit 6**). A vibrant secondary market exists around many of the drops.

19. As an indication of the demand for, and interest in, MSCHF's creations, there are 213,394 users on the MSCHF app; more than 120,000 followers of @mschf on Instagram; and more than 650 million views and mentions of #mschf on TikTok. In order to be notified about a drop, and participate in the drop, a follower needs to have downloaded the MSCHF app onto their mobile phone or tablet from either the Apple or Android app store. Our

app icon (shown at right) features our distinctive yellow and red color scheme, and is unlike any other app that we are aware of.



20. On the day of a new drop, followers with the MSCHF app will receive a pop-up notification on their phones that the drop has landed. If they click on the app, they will then see a red screen introducing the new work and, if they want to go further, they can click a bright red button that says “GO TO DROP.” Once they click that button, they are taken to a MSCHF website made specifically for each individual drop. This is a unique and distinctive business model. I don't know any other artists who release their work purely through an app in this manner. As an example of what this looks like, screenshots from one of our drops appear to the right. Each drop is clearly identified as a MSCHF drop.



21. The MSCHF website has a unique design and is, at times, nonsensical. Many people have told me that the MSCHF website design makes them wonder if their computer is getting hacked. The website is designed to confuse, bewilder, and ultimately pique

the interest of visitors, inviting them to explore MSCHF and come to their own conclusions about MSCHF's purpose.

22. The MSCHF website is not a typical retail website where consumers can buy items whenever they want. The website does not include an "About" page or a "Team" page, and it does not include a hiring page. Instead, the website is designed to feature an upcoming drop, and includes a timer counting down the time remaining until the drop.

23. Most drops are accompanied by a creative "manifesto" that describes and often adds to the expressive intent of the drops. The manifestos, like all of our work, are meant to be thought-provoking and make the readers really consider what we are commenting on.

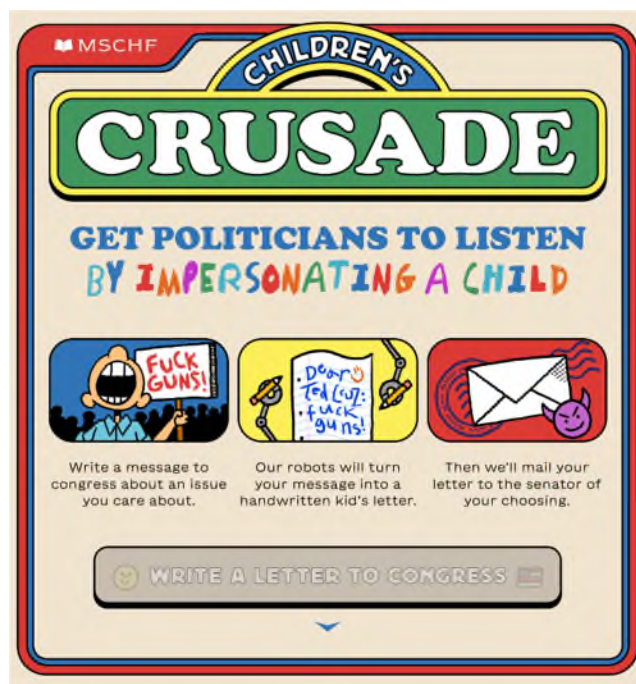
24. When MSCHF's drops feature purchasable goods, they typically sell out in a matter of minutes.

25. Examples of recent MSCHF Drops include:

- On April 7, 2022, MSCHF released Drop 73, called *Vinyl Blade*, an aesthetic exploration that re-fashioned a steel saw blade as a vinyl record that could play a recording of musical artist The Weeknd's song "Out of Time." Images and a brief description of Drop 73 from the MSCHF website are attached as **Exhibit 1**.



- On March 28, 2022, MSCHF released Drop 72, called *Children's Crusade*, which was an initiative allowing MSCHF's customers to write letters to Congress. The letters, however, were written in marker by a robotic arm that re-created a childish-style of writing. Drop 72 explicitly critiqued the difficulty for engaged citizens to contact their representatives unless the engaged citizen appeared to be a child. Images and a brief description of Drop 72 from the MSCHF website are attached as **Exhibit 2**.



- Drop 71 was the latest edition of *Blur*, a recurring art project for MSCHF. *Blur* is a piece of art created by taking an image of a stack of money, digitally blurring the image, and then physically creating the image of blurred out money as an art object. The value and form of the currency varies from drop to drop. The manifesto accompanying *Blur* critiques consumer culture, encouraging people to buy it even though it's unclear what they are purchasing. MSCHF's manifesto for Drop 34 told the audience to "Buy now! . . . Don't overthink it. It's what you've always wanted, isn't it?" The drop's tagline states: "You get what you get don't get upset." A robust secondary market for *Blur* exists, resulting in tremendous economic value for secondary market participants. Images and a brief

description of Drop 71 *Blur* ل.ا from the MSCHF website are attached as **Exhibit 5**. Images and a brief description of Drop 67 *Blur* ₩ from the MSCHF website are attached as **Exhibit 4**. Images and a brief description of Drop 34 *Blur* from the MSCHF website are attached as **Exhibit 9**.



Drop 71, BLUR ل.ا. See **Exhibit 5**.

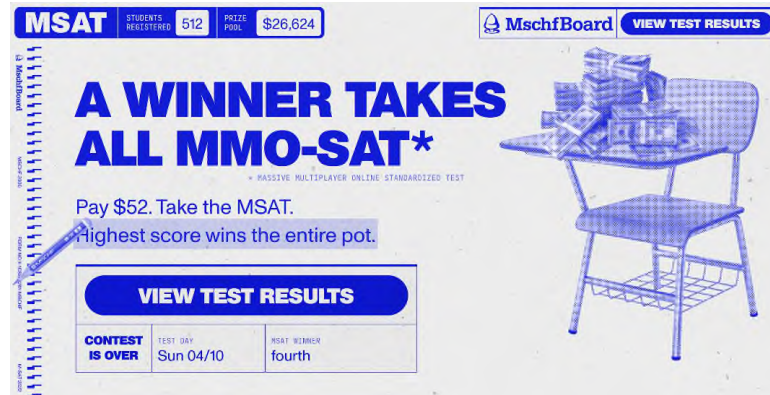


Drop 67, BLUR ₩. See **Exhibit 4**.



Drop 34, BLUR. See **Exhibit 9**.

- Drop 70 was the MSCHF “MSAT” Standardized Test, which critiqued the culture around standardized tests. Images and a brief description of Drop 70 from the MSCHF website are attached as **Exhibit 6**.

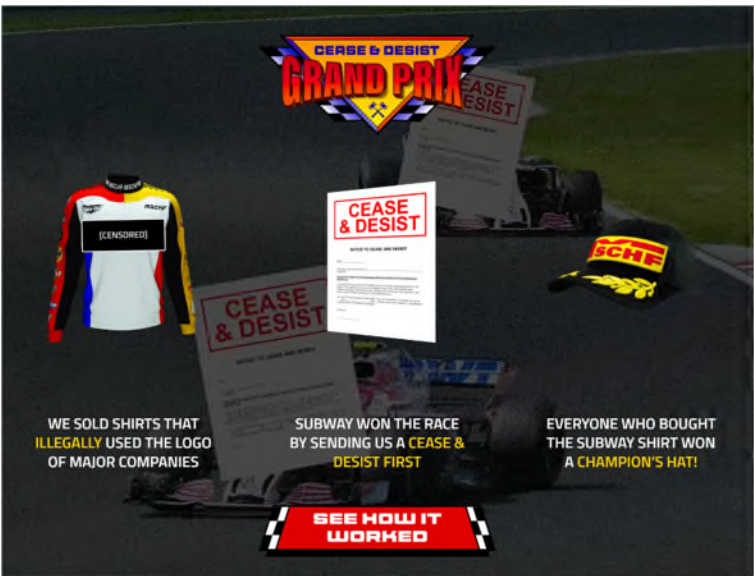


- On Valentine’s Day, Drop 69 critiqued the “Hallmark Holiday” phenomenon and sold defibrillator kits to “Kickstart Your Broken Heart.” Images and a brief description of Drop 69 from the MSCHF website are attached as **Exhibit 7**.

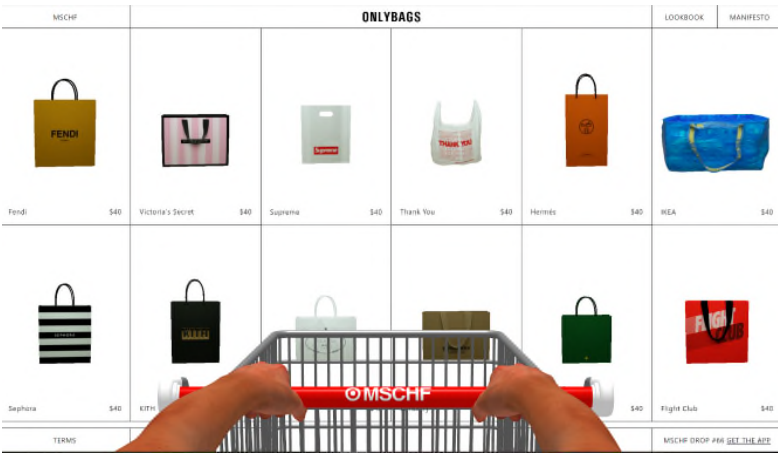


- Drop 68 was the “Cease and Desist Grand Prix,” which critiqued the legal industry for their propensity to send cease-and-desist letters without consideration of the recipient’s rights. Surprisingly, the targeted legal departments got the joke, and Subway eventually responded with a light-hearted cease-and-desist tweet with no goal other than to win the Cease and Desist Grand Prix.

Images and a brief description of Drop 68 from the MSCHF website are attached as **Exhibit 8**.



- Drop 66, "Only Bags," critiqued consumer culture by selling shopping bags from both high-end designers, such as FENDI, and more affordable establishments, such as "Thank You" take-out bags, all for forty dollars each. Images and a brief description of Drop 66 from the MSCHF website are attached as **Exhibit 3**.

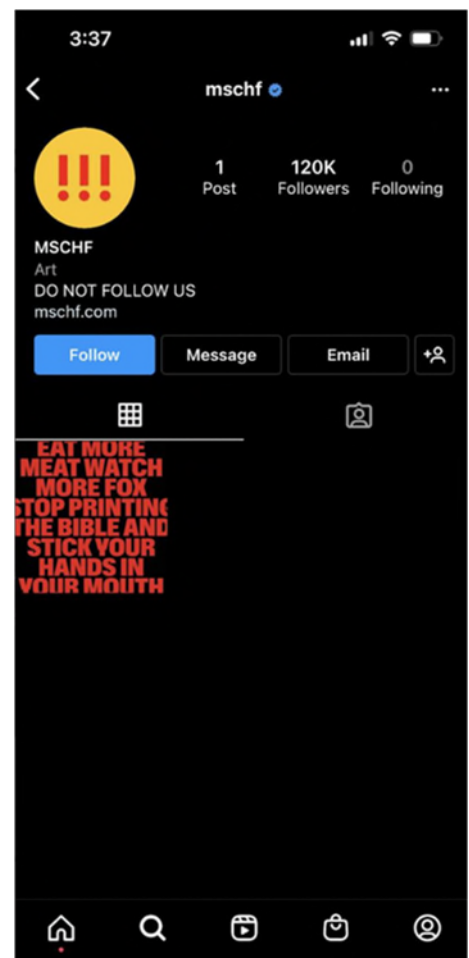


- For Drop 39, "Birkinstock," MSCHF took designer Hermès Birkin bags, disassembled them, and re-purposed the material on the iconic cork Birkenstock sandals, critiquing the arbitrary value of and fetishization of "luxury goods" (**Exhibit 10**).

26. MSCHF's drops are in very high demand and often sell out in minutes.

Given the demand, MSCHF could sell tens of thousands of products; however, MSCHF intentionally sells limited edition art and never re-releases the exact same item. Once a MSCHF drop is over, the product or experience available from the drop is no longer available for sale through MSCHF.

27. When a drop goes live, MSCHF will add the name of the new drop on its website and mobile application. The MSCHF Instagram account, @mschf, displays just one single post, which is always related to the most recent drop. MSCHF has mastered the art of viral marketing and is able to generate a lot of hype around a drop before the drop date by leaving people wondering about what the next drop will look like and be like, and making people anxious to get their hands on the latest product or service. The image associated with the Instagram account is the MSCHF logo, and the text beneath the image reads "MSCHF"; "Art"; "DO NOT FOLLOW US"; and "mschf.com." Despite writing "DO NOT FOLLOW US," the MSCHF Instagram account has over 120,000 followers, yet follows nobody.



28. MSCHF’s page on LinkedIn describes MSCHF as part of the “Dairy Product Manufacturing” industry, and its “About” section reads “Nothing is sacred” – a MSCHF brand tenet, which speaks to the notion that anything that exists in the world is creative fodder.

MSCHF Sneakers

29. One recurrent theme that has run through MSCHF’s artwork is commentary on sneakerhead culture, a ripe target for parody and critique. A sneakerhead is a sneaker “enthusiast”—someone who collects, trades, and displays sneakers as a hobby. Sneakerheads take their sneakers very seriously—making sure they are in pristine condition, at times displaying them on decorative shelves or in glass cases, and even, at times, storing them in climate-controlled vaults.

30. Through the rise of sneakerheads, sneakers have become not only utilitarian devices but popular forms of expression. As Virgil Abloh (the late men’s wear director from Louis Vuitton) once said to *The New York Times*, “many young people may value sneakers more than a Matisse.”⁹ And as *Forbes* reported, “[m]any are very knowledgeable about the origins and history of sneakers. Many spend a great deal of time and money studying the category and its past, while building their collections.”¹⁰ Sneaker brands and celebrities have picked up on this, and sneaker collaborations are incredibly popular in an attempt to make a splash and sell more shoes. Some of the wackiest collaborations in recent years have included Puma’s Sonic the Hedgehog RS-X3 Collection; Ben & Jerry’s Nike SB

⁹ Elizabeth Paton, “The Art of the Sneaker,” *THE NEW YORK TIMES*, May 19, 2021, www.nytimes.com/2021/05/19/style/sneakers-collectibles-design-museum.html. A true and correct copy of the Article is attached as Exhibit 17.

¹⁰ See Matt Powell, *Sneakernomics: Are Sneakerheads important?*, *FORBES*, May 21, 2014, at <https://www.forbes.com/sites/mattpowell/2014/05/21/sneakernomics-are-sneakerheads-important/>.

Dunk Low Chunky Dunky; Nike SB Dunk Grateful Dead Collection; PUMA Super Mario 64 RS-Dreamer; Adidas v. Star Wars The Empire Strikes Back 40th Anniversary Collection; and PlayStation x Zara.

31. We have a lot of comments on this phenomenon. First, with sneakerhead culture being valued as a \$10 billion industry, we can not believe how stagnant shoe designs have actually become, which is what immediately made them one of MSCHF's targets for parody. Second, this notion of collaboration culture has gotten ridiculous.

32. In October 2019, MSCHF released its first sneaker project—the *Jesus Shoes*. These shoes were filled with water sourced from the River Jordan and then blessed. The shoes featured red insoles, a nod to the Vatican, scented with Frankincense, and a steel crucifix on the shoelaces. “Matthew 14:25” was inscribed on the toe box, and the shoes sold for \$1,425, to correspond to that Bible verse. The shoe was designed to mock collab culture, but suggesting that MSCHF had collaborated with Jesus himself. The shoes sold out within one minute.

33. In April 2021, MSCHF issued 666 pairs of the limited-collection *Satan Shoes*, produced in collaboration with rapper Lil Nas X (shown at right with the Satan Shoe). The shoes featured a Nike Air Max 97 with a bronze [pentagram](#) on the laces, an [inverted cross](#) and a drop of human blood. “Luke 10:18” was inscribed on the toe box, which refers to the Bible Verse referencing Satan, and the shoes sold for \$1,018, to correspond to that

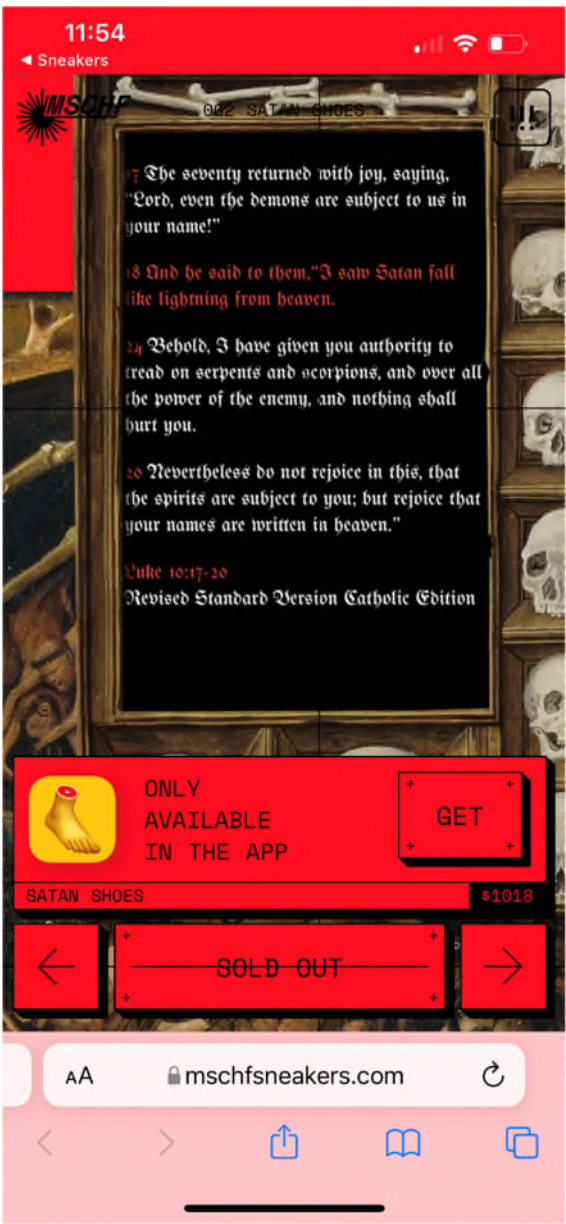


Bible verse. These were not typical sneakers, but rather individually-numbered works of art (much as Banksy and other artists sell numbered, limited-edition prints of their artistic works). Picking up on the theme of the *Jesus Shoes* project, these works further mimicked collab culture by suggesting that, this time, MSCHF had collaborated with the devil. But MSCHF went further with this project; we actually collaborated with Grammy-winning artist Lil Nas X, who featured the *Satan Shoes* in his music video *Montero (Call Me By Your Name)*. Through this collaboration with a shoe that mocked collab culture, we also commented on the social norms that discriminate against marginalized members of society (like Lil Nas X, who famously has spoken about how he felt marginalized by the Church because he was gay).

34. The overwhelming attention the *Jesus* and *Satan Shoes* received—amplified by a litigation brought and very quickly resolved with Nike—solidified that sneakers are an important area to provide comment and expression. At MSCHF, we wanted to continue to use sneakers as a vessel for our narrative, and knew that would require a line of sneakers, rather than just a few drops. For that reason, the MSCHF Sneakers app was born. The MSCHF Sneakers app gives MSCHF an opportunity to further critique sneakerhead culture.

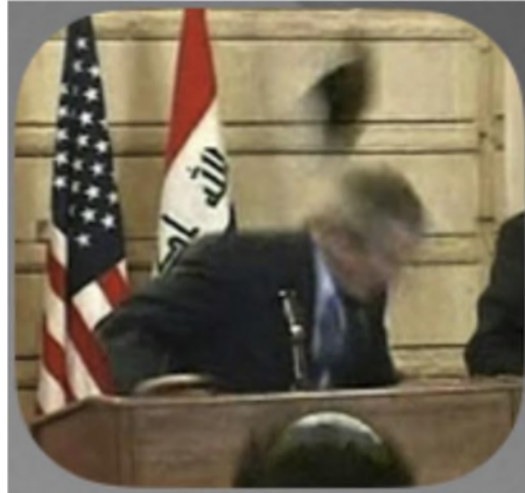
35. The MSCHF Sneakers app is where MSCHF drops its sneaker collections. Like the MSCHF app, it was built in-house from the ground up, provides links to all of the past MSCHF shoe collections, as well as links to the websites that contain the manifestos that went along with those drops. On first use, the MSCHF Sneakers app is nearly unusable. Unlike other apps developed solely for commercial purposes, the MSCHF Sneakers app provides little in the way of typical user experience and usability. Both the MSCHF app and the MSCHF Sneakers app reside on top of MSCHF's proprietary ecommerce backend engine which we

developed to handle mass traffic volume. Examples of content from past drops appearing on the app are as follows:



36. MSCHF’s icon for its sneakers app itself is a work of art. Indeed, a user can pick from one of the below two distinctive app icons, with the icon on the right being a

picture of George Bush getting a shoe thrown at him, which itself sits at the intersection of shoes and political expression.



37. On March 21, 2022, MSCHF dropped its first product from the MSCHF Sneakers app, the TAP3 shoe. This shoe, and its box, was covered in caution tape branded with “MSCHF.” It was MSCHF’s version of a silhouette that every streetwear brand makes their own, and a comment on MSCHF’s previous litigation with Nike over the *Satan Shoes*.

38. On April 18, 2022, following this trend, MSCHF will drop the limited-edition *Wavy Baby* work, a “liquified” version of a classic skate shoe silhouette, but with almost all function warped and stripped away. For this drop, MSCHF has collaborated with rapper Tyga, a very public Vans fan. Through this drop, MSCHF has challenged the sneakerhead culture Vans participates in, questioned consumerism, and confronted the tension between a virtual and digital world. We are so excited about these shoes – the designs are unique, and the message really pushes the bounds of critical discourse, questioning how such an iconic, functional brand has fallen prey to mass consumerism. We took a functional, iconic

skate shoe and made it a non-functional—or at least “non-functional” relative to the ways sneakers traditionally function. The shoes make a statement; they do not grip a skateboard.

39. The commentary of *Wavy Baby* is a continuation of MSCHF’s broader artistic project and the recurring themes in MSCHF’s art. We previously commented on the intersection of consumerism, the digital world, and the physical world with the *Blur* series. We previously critiqued sneakerhead culture, with *Jesus* and *Satan Shoes*. But with *Wavy Baby*, we are bringing all these themes together into a single project, which allows for a commentary that none of those projects alone could provide.

40. *Wavy Baby* is made possible by the fact that Vans occupies a peculiar place in the world, straddling the decades-old, hyper-physical skateboard culture and the much more recent, “very online” consumer culture. No other shoe company sits on that boundary or navigates the tension like Vans does, which makes it a fascinating case study for examining and critiquing consumer desire in the current world. Vans also operates at the boundary between the physical and the virtual, selling “digital shoes” and other “digital skate gear” in the metaverse,¹¹ translating physical goods into virtual goods. MSCHF’s project does the inverse by “smash[ing] the digital and the physical together in an object”—it translates virtual goods into physical goods—and thereby flips Vans’ project on its head. This leaves behind a bizarre remnant that questions whether we can reemerge from our digital lives—on social media, for example, where digital images and videos of Vans abound—without also being fundamentally warped.

¹¹ Matt Zara, “Vans’ Roblox Metaverse Sells Fans Digital Skate Gear,” *STYLUS*, Sept. 15, 2021, <https://www.stylus.com/vans-roblox-metaverse-sells-fans-digital-skate-gear>; see also Chuck Dobrosielski, “Vans Joins the Digital Fashion Movement With Roblox Partnership,” *SOURCING JOURNAL*, Sept. 2, 2021, <https://sourcingjournal.com/footwear/footwear-brands/vans-world-roblox-metaverse-digital-fashion-gucci-garden-burberry-nft-299104/>.

41. Those who follow MSCHF understand that the shoes we create—like *Satan Shoes* and *Wavy Baby*—are a part of our mission to parody and critique modern culture. For example, on April 13, 2022, the social commentary website Hypebeast released a TikTok mentioning *Wavy Baby* and acknowledging “MSCHF brings together culture and parody.”¹²

42. This is not surprising. We are very clear that all of our shoes are MSCHF products and are meant to push boundaries, confront passive consumers, and put questions out there to the world.

43. Each shoe is branded solely as a MSCHF shoe, sold only in specially-designed MSCHF boxes with MSCHF packaging – all clearly marked “MSCHF.”

44. Each shoe is sold only by us, exclusively on the MSCHF Sneaker App.

MSCHF’s Art is Critically Acclaimed

45. MSCHF has received world-wide recognition from news outlets, members of the creative community, and art experts for its artistic achievements. Indeed, the press has widely appreciated MSCHF’s creations as works of art. For example, the Germany-based international fashion and art agency *Highsnobiety* discussed numerous MSCHF art projects at length in a 2021 feature titled, “The Museum of MSCHF: A Retrospective of the Creative Industry’s Antiheroes.”

46. MSCHF’s artwork has generated active interest with some of the biggest galleries in the world. For example, MSCHF’s *Bigger Blur* was on display at Phillips Auction

¹² @hypebeast. #hypebeast: a look back at some of #MSCHF’s #hype shoe drops #sneakertok #sneakerhead #wavybaby #mschfdrops. April 13, 2022; <https://www.vn.tiktok.com/ZTdQkVjXa/>. A true and correct copy of the video is attached as Exhibit 18.

House in New York in 2021. @phillipsauction, “On display in the breezeway of our 432 Park Avenue galleries, 'Bigger Blur,' 2021, is the latest in @msCHF's 'Blur' series....”¹³



47. The *Birkinstocks*, *Jesus Shoes*, and *Satan Shoes*, have all appeared in art galleries, including the Design Museum of London and the Exhibition Subversive Design NRW-Forum in Dusseldorf.

48. A panel at the art auction house Christie’s discussed MSCHF’s *Birkinstock* project and agreed that the artwork—created through repurposing disassembled Hermès Birkin bags into the iconic cork Birkenstock sandals—were not merely high fashion but undeniably “conceptual art.”

49. MSCHF has been invited to present at both Art Basel and the Perrotin gallery later this year. Art Basel is one of the world’s most important and prominent annual art

¹³ Instagram, Dec. 18, 2021, <https://www.instagram.com/p/CXo-oAsu8R6/>. A true and correct copy is attached hereto as **Exhibit 19**.

fairs. Perrotin is considered among the most renowned art galleries in the world. The Art Basel and Perrotin features will continue the public prominence of MSCHF art, such as the public placement of *Bigger Blur* subsequent to auction at Sotheby's of a different piece, *Big Blur*.¹⁴

50. MSCHF has collaborated with and sold products to many brands, celebrities, influencers, and other popular culture trailblazers. For instance, Grammy-winning rapper Future was seen wearing MSCHF's *Birkinstocks*.¹⁵

51. The admiration has extended to other forms of fashion as well. Critically-acclaimed musician Grimes modeled one of MSCHF's "Guns 2 Swords" accessory swords at the 2021 Met Gala.¹⁶

52. And MSCHF is known and loved by its many followers. For instance, there are over 650 million views of the hashtag #MSCHF on the popular social media app TikTok.

53. Despite the popularity of MSCHF and the anticipated popularity of *Wavy Baby*, I do not anticipate making much, if any, profit from *Wavy Baby*. This is not unusual for MSCHF. In fact, several other MSCHF drops did not generate any profit, including <https://chairsimulator.com>, <https://spotsrampage.com>, <https://childrenscrusade.com>, and

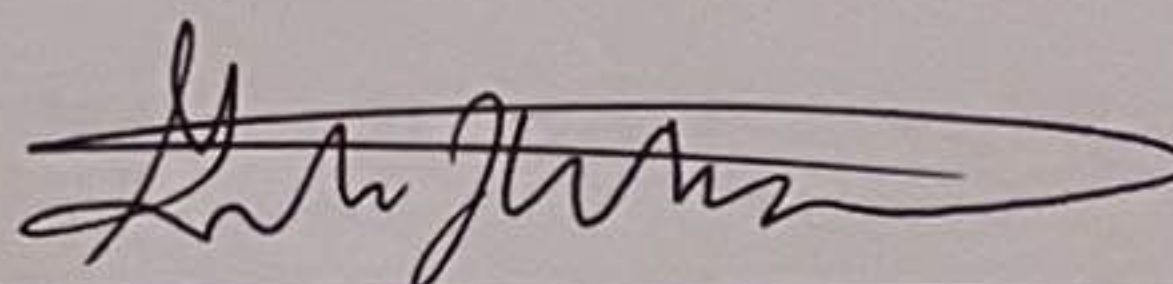
¹⁴ Sarah Osei, *Is MSCHF's New Sotheby's Lot its Most Controversial Art Piece Yet?*, HIGH SNOBIETY, Apr. 2022, <https://www.highsnobiety.com/p/sothebys-mschf-big-blur-auction/>. A true and correct copy of the article is attached hereto as **Exhibit 20**.

¹⁵ Trace William Cowen, *Future Wears \$48,000 Sandals Made Out of Birkin Bags*, COMPLEX, Feb. 8, 2021, <https://www.complex.com/style/future-wears-48-thousand-dollar-sandals-made-out-of-birkin-bags>. A true and correct copy of the article is attached hereto as **Exhibit 21**.

¹⁶ Jake Silbert, *MSCHF Made Grimes' Met Gala Sword out of an Assault Rifle*, HIGH SNOBIETY, Sept., 2021, <https://www.highsnobiety.com/p/mschf-guns-2-swords/>. A true and correct copy of the article is attached hereto as **Exhibit 22**.

<https://mschfboard.org/>, among others. Although the expected revenue from our limited *Wavy Baby* drop will likely cover the costs of the artwork itself, our financial forecasts do not anticipate any significant profit. Indeed, the costs of acquiring talented shoe designers, locating an appropriate factory, building a new mold, and development through multiple iterations, are considerable. Even though some of these costs could be amortized across future shoe projects, as may be appropriate, we anticipate only a minimal profit from this endeavor. Thus, for MSCHF, *Wavy Baby* does not represent a profitable source of income.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 17, 2022 in Brooklyn, New York.

A handwritten signature in black ink, appearing to read 'Gabriel Whaley', written over a horizontal line.

Gabriel Whaley